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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,416	04/12/2004	Matthew R. Selmon	LUM 5004 USCNT3	3249

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EXAMINER	
GRAY, PHILLIP A	

ART UNIT	PAPER NUMBER
3767	

NOTIFICATION DATE	DELIVERY MODE
03/30/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/823,416	SELMON ET AL.	
	Examiner	Art Unit	
	Phillip Gray	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,13,20,21,25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,13,20,21,25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/21/2010 (X2)</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's communication of 10/8/2010.
Currently amended claims 1, 4, 13, 20-21, 25-26 are pending and rejected below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4, 13, 20-21, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty U.S. Patent 4,774,949) in view of Hofling (U.S. 5,354,279).

Fogarty discloses an introducing catheter system (see figures 1-9) with a guidewire (113, 123), catheter body and lumen (10), Catheter endpiece (region shown in figure 6-8) with a deflection housing (region near 121), a distal port (119) a lateral port

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(near 22) both in communication with the catheter lumen (of 10), a working element with resilient tip (36/40) which is an axially translatable cannula with a lumen for traversing over the single guidewire and having a preformed curved distal section (note end of 40).

Note that the distal section is configured for a guidewire to pass (123) and the lateral port is configured for a cannula with lumen and guidewire (36/40), and also a working element with resilient tip (36/40) keyed to the catheter body is disclosed in Fogarty to advance distally through the lateral port (note figure 5), further note different configuration when working element is in catheter (figure 4) and second configuration when extended from catheter (figure 5). Concerning claim 4 is is examiners position that the inside diameter of Fogarty is uniform as shown in the figures 1-4. Concerning claim 25 see Hofling figures 3 and 9 and the linear slide mechanism in the proximal handle.

Fogarty discloses the claimed invention except for the resilient, sharpened and pointed distal tip working element with a straight configuration when positioned in the catheter and a curved configuration when extending from the catheter. Hofling teaches that it is known to use a resilient, sharpened and pointed distal tip working element as set forth in the abstract, figure 2 and column 2 and column 4 lines 36-60, to provide a means to supply fluid directly to the walled portion of the body cavity being treated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Fogarty with a resilient, sharpened and pointed distal tip working element as taught by Hofling, since such a modification would provide the system with a sharpened cannula needle with a straight configuration when positioned in the catheter and a curved configuration when

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extending from the catheter for providing a means to supply fluid directly to the walled portion of the body cavity being treated.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent 4,774,949) in view of Hofling (U.S. 5,354,279), in further view of Weighton (U.S. Patent 3,570,498).

Fogarty in view of Hofling discloses the claimed invention except for the locking member in the handle. Weighton teaches that it is known to use a locking member in the handle as set forth in paragraph at columns 1-2 to provide a means to secure and maintain the position of the lower working instruments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device as taught by Fogarty in view of Hofling with a locking member in the handle as taught by Weighton, since such a modification would provide the device with a locking member in the handle for providing a means to secure and maintain the position of the lower working instruments below.

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 13, 20-21, 25-26 have been considered but are moot in view of the new ground(s) of rejection. Arguments directed amended claim limitations to the endpiece including a deflection housing secured to the catheter body, the axially translatable cannula and preformed curved distal section of a working element are addressed in the new rejection above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/
Examiner, Art Unit 3767

/Theodore J Stigell/
Primary Examiner, Art Unit 3763

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